

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5197 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.L.GOKHALE

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

NARANBHAI HAMIRBHAI PADHARIA

Versus

STATE OF GUJARAT

Appearance:

MR HARIN P RAVAL for Petitioner
MR MA BUKHARI ASSTT. GOVERNMENT PLEADER
for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.L.GOKHALE

Date of decision: 06/08/97

ORAL JUDGEMENT

Heard Mr. Raval for the petitioner and Mr.Bukhari, AGP for the respondents. The petitioner is an agriculturist holding lands admeasuring 119 Acres and 31 Gunthas in District Surendranagar. After coming into force of the Gujarat Agricultural Lands Ceiling Act, 1960, the petitioner was expected to fill in the form, explaining his holdings and on his so filing necessary

form, the respondent no.3- Mamlatdar who is also an Agricultural Lands Tribunal, came to the conclusion that the petitioner is holding 11 Acres and 31 Gunthas of land in excess. From the papers which are annexed to this petition, it appears that a statement of the petitioner was recorded by the respondent no.3 before coming to that conclusion and that statement dt. 19/2/1977 is annexed at Page 26 to this petition.

2. Mr.Bukhari has drawn my attention to the original order in that proceedings dt. 5th April, 1977. In first para thereof, the order refers to the fact of publication of the necessary notice in the requisite form No.5 under Sec.20(1) of the said Act. He also pointed out to me from that order that the requisite notice in Form 6 under Sec.20(2) of that Act was also given. The provision of Sec.20(2) is subject to one under Sec.20(3). This Sec.20(3) lays down the order of preference for the purposes of selection of land. Amongst others, it lays down that order of preference shall be as follows:-

viz-(a) land held as owner on which there are encumbrances.

(b) land held as owner on which there are permanent structures or wells; etc.

Sec.20(2)(b)(ii) gives a choice to the land owner to retain the piece or pieces of land, which he wishes to continue to hold. Mr. Bukhari submits that at that point of time, no preference was indicated to him as to what part of land the petitioner wants to retain. Besides, it can be seen from the recording of evidence on 19th February, 1977 that the petitioner was specifically asked a question namely that in case any land is held to be excess, which survey number he would prefer to surrender and the petitioner has answered that since there is no surplus, there is no question of indicating any preference.

3. The order of the Mamlatdar and A.L.T. holding 11 Acres and 31 Gunthas of land in excess was carried in appeal and thereafter in revision where it came to be confirmed. The petitioner filed writ petition against all these orders in this court being Special Civil Application No. 4934 of 1981. The same came to be allowed but the order of this court was subsequently set aside by the Supreme Court by its order dt. 8th September, 1995 in Special Leave Petition No. 8565 of 1995 which confirmed the order of the Mamlatdar.

4. In view of the above development, the Mamlatdar proceeded to take possession of the concerned lands and on the representation of the petitioner dt. 20th September, 1996, he replied on 8/10/1996 that his application was rejected. The petitioner wrote to the Deputy Collector and the Deputy Collector's letter to the Mamlatdar dt. 31/3/1997 asked him to consider the choice of the petitioner. The petitioner has thereafter again approached the Mamlatdar but it appears that he has, in the meantime, taken the possession of the lands mentioned in the order dt. 5/4/1977 on 4th of June, 1997. It is in view of this development and in view of the denial of exercise of choice that the present petition has been filed.

5. Mr. Raval, learned advocate appearing for the petitioner, submitted that all through-out the proceedings upto the Supreme Court, the petitioner had been contending that there was no surplus in his holdings and hence there was no question to raise the point as to what

was his choice. He, therefore, submitted that at this stage that he may be allowed to have the choice. Alternatively, he submitted that in view of the direction of the Deputy Collector, the Mamlatdar ought to have gone into this exercise. As far as first submission of Mr. Raval is concerned, the provisions of Sec.20(2) read with Sec.20(3) of the above Act are clear enough, so that the party concerned may make its choice clear at that stage itself. The order of the Mamlatdar also refers to the fact that necessary notice had been given to the petitioner. The petitioner, however, declined to express his choice. When the order of the Mamlatdar went against him and the matter was carried to the higher forum, he should have made an alternative submission that in case his land is held to be in excess, then he may be permitted to retain the land which was sought to be taken over by the Mamlatdar and he will surrender some other land to the Government. Inasmuch as such a submission had not been made even before the Supreme Court, it cannot be said that the same is any longer open to the petitioner. Such alternative plea, if available to the petitioner, ought to have been taken right from beginning as required by Sec.20(1) read with Sec.20(3) of the Act, but in any case, in the Apex Court inasmuch as appeal of the State was to be allowed. Since this plea was not taken over there, raising this submission now is too late. In any case, the Mamlatdar cannot be faulted for the action taken by him.

5. Alternative Mr. Raval submitted that the Mamlatdar

ought to have followed the direction of the Deputy Collecftor. Mr.Raval states that grievance made to the Deputy Collector is to be considered as appeal under Sec.35 of the Gujarat Agricultural Lands Ceiling Act, 1960. Even on this submission, in the light of whatever that is observed above, in view of the plea not being taken on earlier occasion, it cannot be said that the Mamlatdar has in any way committed any error.

6. If the petitioner has any grievance based on administrative superiority of the Dy.Collector, he may agitate the same administratively.

7. The petition is, therefore, rejected. When the matter came to me earlier, I had granted interim relief that the respondents will not proceed to allot the concerned lands in the meanwhile. Mr. Raval prays for continuation of this stay for a period of three weeks. The order passed by me earlier on 17/7/1997 will continue to operate for three weeks from today.

CCS -----